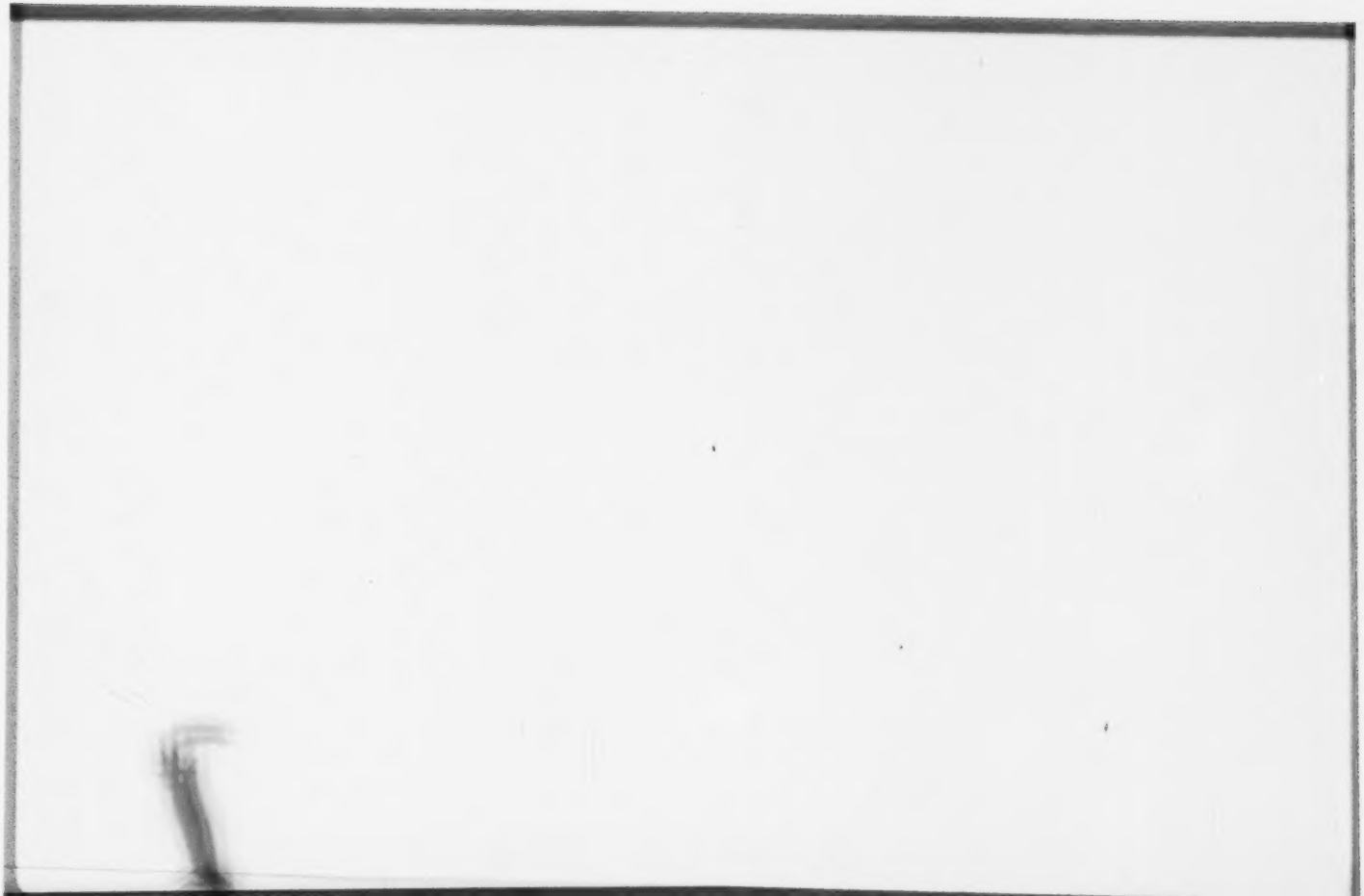

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CHARLES ELMORE CROPLEY
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# Supreme Court of the United States

OCTOBER TERM, 1939.

## No. 896.

AMOS G. McCAMPBELL, JR., - - Plaintiff-Appellant,

*versus*

THE WARRICH CORPORATION AND ROBERT EIGER, Doing Business Under the Name and Style of Eiger Realty Company, - Defendants-Appellees.

## PETITION FOR REHEARING ON PETITION FOR CERTIORARI.

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WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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# Supreme Court of the United States

OCTOBER TERM, 1939.

No. 896.

---

AMOS G. MCCAMPBELL, JR., - *Plaintiff-Appellant,*

*v.*

THE WARRICH CORPORATION AND ROBERT EIGER, DOING BUSINESS UNDER THE NAME AND STYLE OF EIGER REALTY COMPANY, - - - - - - *Defendants-Appellees.*

---

## PETITION FOR REHEARING ON PETITION FOR CERTIORARI.

---

*To the Honorable Supreme Court of the United States:*

Comes the complainant, Amos G. McCampbell, Jr., and respectfully petitions this Honorable Court to grant a rehearing upon his petition for a writ of certiorari in the above entitled cause, and as the basis for same, respectfully represents the following vital elements, to-wit:

### I.

The complainant has a constitutional right to proceed in *forma pauperis* unless and until it be shown that his statement of his status is incorrect.

II.

This is an action for ouster against the appellees from an undivided eleven-sixtieths (11/60ths) interest in the property described in the complaint.

III.

The complainant has been the victim of fraud, collusion, and concealment.

Until, since the denial of the writ of certiorari, the complainant made strenuous appeals to his Excellency the President of the United States, to the Attorney General of the United States, the Judiciary Committee of the United States Senate, and other influential individuals and organizations, he and his counsel were utterly unable to obtain from the United States District Court for the Northern District of Illinois, Eastern Division, the essential items in the old record of case 16059 of the Circuit Court of the United States, now said District Court.

Even then he was totally unable to obtain anything nearly approaching such a complete record, and many vital parts have not yet been obtainable.

When preparing the pleadings in this case, he was only able to obtain a few of said papers, of which we had photostatic copies made, which are filed as exhibits.

On July 2, 1940, he and his counsel were in Chicago and in company with a deputy of the United States District Court Clerk, they spent several hours in the

attic of the Federal Building trying to locate the books which would give the steps in said case, but in vain.

They then again called for the papers in said case and were given a bunch of papers entirely different from those they had seen before, but in said papers they obtained many salient facts which establish the same principles of law on which he has relied but forcefully accentuating them, which show that he was misled and deceived by the concealment and withholding of these records.

Even with the papers now found, which have only appeared since his appeal to the authorities referred to, the record is still far from complete, and in the interest of simple justice he now asks this Honorable Court to require produced to it a complete record in case 16059 of the Circuit Court of the United States, now the District Court of the United States for the Northern District of Illinois, Eastern Division, as only with such records can this Court get a clear conception of the fraud and deceit to which he has been subjected.

## IV.

It is completely ascertained from the last records obtained that Hugh L. Mason, who was disbarred in 1895, represented Leila Bryant, Sallie L. McCampbell, and Pattie B. Rowland, in 1884 and as their counsel filed a supplemental bill on January 24, 1884, filed herewith as part hereof and marked for identification, Exhibit O.

He was not appointed as guardian *ad litem* for the infant remaindermen until January 6, 1886, as shown by the order of Court filed herewith as part hereof and marked as Exhibit P.

Nevertheless, he continued to act both for the life tenants mentioned, and also as guardian *ad litem* for the infant remaindermen and as will be seen, the interest of the remaindermen and those of the life tenants were absolutely adverse and Hugh L. Mason negotiated the sale of the life estates of Robert L. Hyman, Jr., and then, as guardian *ad litem* for the remaindermen, failed completely to protect their interests, thus perpetrating a fraud upon said infants, which vitiates the purported sale to Edward D. Mandell of the fee to the property described in the petition, excepting therefrom the life estates in the hands of Hyman, subject to the mortgage and likewise subject to the remainders.

> "In law as in morals, it may be stated that as a principle no servant can serve two masters, for either he will hate the one and love the other or else he will hold to the one and despise the other. Luke, xvi 13."
>
> Pacific Vinegar, etc., Works v. Smith, 145 Cal. 352, 78 Pac. 550, 104 A. S. R. 42; Ramspeck v. Pattillo, 104 Ga. 772, 30 S. E. 962, 69 A. S. R. 197, 42 L. R. A. 197; Florance v. Adams, 2 Rob. (La.) 556, 38 Am. Dec. 226; Shepherd v. Lanfear, 5 La. 336, 25 Am. Dec. 181; Hall v. Paine, 224 Mass. 62, 112 N. E. 153, L. R. A. 1917C, 737; Rupp v. Sampson, 16 Gray (Mass.), 398, 77 Am. Dec. 416; McDonald v. Maltz, 94 Mich. 172, 53 N. W.

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## V.

No limitation would apply to the claim of the plaintiff except after the death of the last life tenant, Mrs. Pattie B. Rowland, on the 8th day of August, 1934, making the period of limitation expiring in seven years thereafter on August 7, 1941, Gibbs v. Gerdes, 291 Ill. 490, from which we quote as follows from page 496:

> "Possession of land by a tenant for life cannot be adverse to the remainderman or reversioner, and, if he conveys to a third person—the possession of the purchaser is not, during the continuance of the life estate, adverse to the remainderman or reversioner. The statute of limitations does not run against the remainderman or reversioner until after the life estate falls in, and it is only after the latter event occurs that the possession will be adverse to the remaindermen or reversioner. The possession of the tenant for life, or his vendee, during the continuance of the life tenancy, is, in contemplation of law, the possession of the remainderman or reversioner."

See Cahill, Illinois Revised Statutes (1931), Limitations, Ch. 83, Sec. 4.

Under the facts of the case, the Court did not have jurisdiction to sell the property under said mortgage as to the remainder interest because the infant remaindermen were not brought before the Court upon the occasion of the discharge of the Receiver and it did not have jurisdiction to sell the property under the judgment excepting as a whole and considered as a whole, it brought far in excess of the mortgage debt, interest and costs, leaving the remainder interest intact.

**VI.**

For the first time, on the 2nd of July, 1940, has the complainant been able to obtain from the said District Court of the United States a copy of the judgment rendered in case 16059, which explains fully the material of which the complainant had been kept in ignorance and the copy of said judgment is herewith filed as part hereof as Exhibit Q. The complainant had been informed and believed that James M. Bryant, together with his three daughters, had executed a mortgage to The Charter Oak Life Insurance Company in 1872 but was unable to find a record of same. He now has ascertained that the said judgment was based on a mortgage originally executed to secure a loan of $19,000.00 from Edward S. Isham and acknowledged by James M. Bryant on the 17th day of May, 1866. That mortgage was later assigned by said Isham to the Charter Oak Life Insurance Company, the assignment being dated the 11th day of February, 1867.

That mortgage was re-recorded together with the assignment thereof, on December 10, 1881, being withheld from record for ten (10) years or thereabouts, following the Great Fire in Chicago which occurred in the fall of 1871.

The photostatic copy of said mortgage and assignment is filed herewith and made a part hereof as Exhibit R.

**VII.**

We now have the report of the Master in Chancery, which is filed herewith and made a part hereof as Exhibit S. This brings the accounting down to March 30, 1893, and the balance for which the judgment was rendered is doubtless the costs in the proceedings.

**VIII.**

From the judgment (Exhibit Q) it will be seen that the judgment was rendered on January 6, 1886, in the sum of Twenty-five Thousand Eight Hundred Twenty-four Dollars and Thirty-three Cents ($25,824.33) to bear interest from said date at the rate of 6% per annum.

That judgment was rendered nearly three (3) years before the death of James M. Bryant, therefore the life estates provided in the deed executed by him on the 28th day of August, 1866, had not yet passed into the possession of the life tenants.

That judgment was against all of the property described in the complaint, including therefore, the inchoate life estates and remainders.

Said property therefore was in lien under said judgment **in its entirety.**

On page 5 thereof it will be seen that the Court provided, in the event of sale, under said judgment the following:

> "In default of so doing that all and singular the said premises mentioned and described in the said cross-bill of complaint and hereinafter described, or so much thereof as may be sufficient to satisfy the amount due to the complainant in said cross-bill as hereinbefore adjudged, together with the interest and costs in this cause, **and which may be sold separately without material injury to the parties interested."**

We believe that the reference "which may be sold separately without material injury to the parties interested" refers to sale of only part of the physical property under mortgage sufficient to satisfy the judgment, and not to the separate interests of any of the defendants. There was thereon a four-story building and said property was indivisible.

That certainly would not by any means permit the exception of the life estates, thus casting the entire burden upon the remainders and thus permitting the life estates purchased by Hyman, which rested under the lien, as well as every other portion of the property,

to obtain a gross and fraudulent advantage, at the expense of the said infants, a **"material injury"** to them.

From the terms of the judgment we claim that it was gross fraud on the part of the Court and the guardian *ad litem* as well as Hyman and Mandell to undertake to sell said property in any such manner as was provided by the order of sale, being, first, the fee excepting the life estates; second, if that realized insufficient, to include the life estates; three, if that still was insufficient then to sell all interests.

According to our understanding, that order only meant that it was the intention of the Court to defer the remainders until the third provision, and in consequence we maintain the remainders were never sold, but if they were, it was fraud of the most flagrant character upon said infants, particularly upon the part of Hugh L. Mason, who had been intrusted with the sacred duty of protecting the interests of those children, when he, as the records show, utterly failed to protect them as he should have done, by insisting upon the sale of the life estates and if they were to be separated in any way from the remainders, then they should have been the first part to be sold, instead of preferring them by exception and casting the entire burden upon the infants' interests.

## IX.

When the records in said case 16059 are complete, they will show that within six (6) months prior to the death of James M. Bryant, he sought permission of the

Court to sell this property for One Hundred Ten Thousand Dollars ($110,000.00) but was refused such permission because that amount was not as much as two-thirds (2/3rds) of the value thereof.

No appraisal was had as a basis for the sale in November, 1893.

The said property was assessed at that time by Cook County, Illinois, valued for One Hundred Seventy-six Thousand Dollars ($176,000.00).

Notwithstanding the above facts, which will be shown when the record is complete in case 16059, the Court permitted this property to be sold for the sum of Thirty-eight Thousand and Six Hundred Forty-seven Dollars and Ninety Cents ($38,647.90) and as we shall show under the conditions of the sale, no redemption was possible as provided for by the law of Illinois. The life estates gave Hyman possession indefinitely, and the Court was powerless to deliver possession.

The Receiver in charge of said property was Cyrus Bentley, as shown on page 6 of the bill of Edward D. Mandell filed herewith as part hereof and marked Exhibit T.

Said Receiver was discharged as shown therein, on or about the 24th of March, 1886 (page 6).

When the said Receiver was discharged the infant remaindermen were not brought before the Court on said proceeding and therefore we claim that the discharge of the Receiver was vitiate, null and void and that in contemplation of law. The property was in the

hands of a Receiver of the Court continuously until the purported sale thereof in November, 1893.

Such being the situation, all of the net income from said property should be applied toward the liquidation of the judgment lien and the fact that such was not done, was a further fraud upon the interests of the infant remaindermen.

In further illustration, the lease to Murphy (Exhibit XV) provides the net rental of $7,000.00 per annum for One Hundred Ninety-nine years (199).

Assuming a 5% net return, would make the value of said property One Hundred Forty Thousand Dollars ($140,000.00).

To obtain that lease Murphy paid Eighty Thousand Dollars ($80,000.00) (Exhibit 15).

In turn Murphy sold the lease to Eiger for Ninety-five Thousand Dollars ($95,000.00) (Exhibit 18).

This would indicate a value of at least Two Hundred Twenty Thousand Dollars ($220,000.00).

There was a four-story building upon this property worth at least Twenty-five Thousand Dollars ($25,000.00), making a total value of Two Hundred Forty-five Thousand Dollars ($245,000.00).

As heretofore shown the life estates were subject to the judgment lien and so remained in the hands of Hyman and when Mandell purchased the life estates in turn from Hyman, they were likewise in lien under said judgment and being so, we claim that the amount paid therefor, by Mandell, Twenty Thousand Dollars ($20,000.00), must be credited upon the judgment with remainders intact and money due them.

The judgment having been rendered against the property in its entirety, during the lifetime of James M. Bryant, the life estates, when coming into the possession of the three daughters, were subject to the lien of that judgment and in addition thereto, all costs and interest accruing thereon.

Such being the case, in all fairness, equity and justice there must be credited as to the infant remaindermen the entire sum realized consisting of the Thirty-eight Thousand, Six Hundred Forty-seven Dollars and Ninety Cents ($38,647.90) paid by Mandell plus the Twenty Thousand Dollars ($20,000.00) which he paid for the life estates in lien under the judgment, making a total sum paid for this property as a whole, which is the only way the judgment can be considered, Fifty-eight Thousand Six Hundred Forty-seven Dollars and Ninety Cents ($58,647.90) which exceeds by Twenty Thousand Dollars ($20,000.00) the amount of the judgment, interest and costs.

The judgment being based upon a mortgage antedating the deed of August 28, 1866, the interests of the life tenants and the remaindermen as to the liability and lien of the said judgment were **joint** and **successive,** but not **several.**

When Mandell bid the full amount of his judgment, interest and costs, he thereby paid the entire debt of James M. Bryant up to the time of his death, and in addition thereto he paid the entire debt of the life tenants and also the Nineteen Thousand Dollars ($19,000.00) principal of the mortgage.

As the life estates were in lien to Mandell under the judgment the infant remaindermen were entitled to and must be subrogated to Mandell's lien thereon, his debt having been paid at the expense of the remainders alone.

That anomalous situation was brought about through the fraudulent collusion of Hugh L. Mason, guardian *ad litem,* Elijah B. Sherman, Master in Chancery, Robert W. Hyman, Jr., and Edward D. Mandell, all of whom conspired to defraud the infant remaindermen. We have just learned of proceedings in the State courts of Illinois in support of this and are waiting copies.

It is thus seen, as the property was indivisible, that the Court was without any jurisdiction to sell said property, except as a whole and in its entirety and when the Court undertook to reserve from sale the life estates in the hands of Hyman, thus casting the whole burden upon the remaindermen, that was a fraud upon the remaindermen and exceeded the jurisdiction of the Court, which rendered such purported sale null and void.

In addition to that, the remaindermen having not been brought before the Court on the discharge of the Receiver, is an additional violation of the law and a further fraud upon the remaindermen which also would nullify the purported sale.

In addition to these matters the fraudulent representation by Hugh L. Mason of the violently antagonistic interests, under the circumstances of this case, of

the life estates and the remainders, both represented by Hugh L. Mason, constituted a further fraud, of the most flagrant nature, upon the remainders.

Under all these conditions we cannot conceive that the Courts can possibly sanction such gross fraud as has been shown.

## X.

In view of the fraudulent concealment from and deception upon the complainant, preventing him, until the 2nd day of July, 1940, as shown, from ascertaining the facts affecting his interest, we earnestly adjure this Honorable Court, not only to grant a rehearing for his petition for a writ of certiorari, but to order that the entire record in case 16059 of the Circuit Court be produced herein and that the complainant be granted a rehearing, as the property realized, not only in excess of the amount of the debt, interest and costs, but said amount in total was not one-fourth (1/4th) of the real value of said property, at the time of the alleged sale, as there was a four-story building thereon and the assessed valuation was undoubtedly less than the saleable value thereof and that shortly prior to his death, James M. Bryant would have had a sale of the said property, even under the pressure conditions shown by the judgment, for One Hundred Ten Thousand Dollars ($110,000.00) when it was doubtless worth more than twice that sum and by the machinations shown, the interest of the infants, constituting their patrimony in said property, were utterly and ruth-

lessly and fraudulently sacrificed, by the Court, without any attempt to protect them, by the guardian *ad litem,* Hugh L. Mason, who was afterwards disbarred. Whether his disbarment was in consequence of the ruthless sacrifice of the interest of these infant remaindermen, we have not been able to ascertain.

However, appellees are unable to obtain a loan on the property, because of claimant's interest.

Experts who have examined this title will make affidavits only when they can get the complete record of case 16059.

## XI.

In conclusion we quote from the deed of James M. Bryant, August 28, 1866, the provisions in regard to the remainder interests showing conclusively that they were and are vested remainders:

> "To have and to hold to the said parties of the second part, after the death of the said party of the first part, for and during the lives respectively of said parties of the second part and to the issue or **heirs of the bodies,** respectively, **of said parties of the second part,** in fee simple, said issue or heirs of the bodies of said parties of the second part, **taking per stirpes;** provided, that if any one or more of the said parties of the second part shall die **without leaving issue or heirs of his or her body;** then his, her, or their portion, or portions are to survive and go to and be held by the surviving party or parties of the second part respectively for life or lives and then to the issue or heirs of the body of said survivor or survivors in

fee simple; and **provided further that if all of said parties of the second part shall die without leaving issue or heirs of their bodies, then each and all of said parcels of land or lots shall revert to the heirs of the party of the first part;"**

While awkwardly expressed, the above provision in event of any of the life tenants dying without issue or heirs of his or her body, is solely a provision for reversion.

The infant children of Mrs. Sallie B. McCampbell became vested remaindermen upon the birth of Roberta McCampbell, the oldest child, in 1876, and successively thereafter upon the birth of each of the others.

Such vested remainder interest was defeasible only in the event of the death of any of them, prior to the death of their mother, in which event, if that vested remainderman left no issue, his or her remainder would pass to his or her brothers and sisters, members of the class.

If such a remainderman died previous to the mother, leaving a **natural** child, such child would acquire a contingent remainder interest as soon as born, which, in the event of its parent dying before Mrs. McCampbell, would then immediately become a vested remainder in said child; this is only because such child would be **an heir of the body** of Sallie B. McCampbell.

On the other hand, if one of her issue died prior to her death, leaving an **adopted** child, with full right of inheritance, but no heritable blood of Mrs. Sallie B. McCampbell, such child could take no part of the property in question, because the deed provides that it

would only go to the issue of the **bodies** of the **life tenants** or to **heirs** of **their** bodies, *per stirpes.* Such adopted child, despite its right of inheritance from the adoptive parent, would not be an heir of the body of the life tenant, nor would it be *per stirpes.*

In view of the foregoing, we earnestly petition this Honorable Court in the interests of justice, to grant to the complainant a rehearing in this matter and that said hearing be an oral hearing before the entire Court, with permission to present this matter in its true light by counsel, with the entire record in said case 16059, before this Honorable Court, which we have been unable to obtain and to which we are entitled, to the end that this Honorable Court may have a true and complete picture before it.

The complainant asks the Court either to grant a writ of certiorari setting forth its written opinion based upon the new material herein and conforming the opinion thereto or to remand this cause to the Circuit Court of Appeals, with instructions to permit an amendment of the pleadings conforming with this newly discovered material and to have brought before said Court the entire record on the old case 16059.

Respectfully submitted,

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(13)

SEP 11 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1939.

## No. 896

AMOS G. McCAMPBELL, JR.,

*Petitioner,*

*vs.*

THE WARRICH CORPORATION AND ROBERT EIGER, DOING BUSINESS UNDER THE NAME AND STYLE OF EIGER REALTY COMPANY,

*Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

**ANSWER BY RESPONDENTS TO PETITIONER'S PETITION FOR REHEARING ON DENIAL OF HIS PETITION FOR WRIT OF CERTIORARI.**

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## ANSWER BY RESPONDENTS TO PETITIONER'S PETITION FOR REHEARING ON DENIAL OF HIS PETITION FOR WRIT OF CERTIORARI.

### Summary of Argument.

I. Petitioner is not entitled to present a petition for writ of certiorari by constitutional right. (*Infra*, page 2.)

II. Petitioner has set forth none of the reasons which must be set up to entitle him to a writ of certiorari in this cause. (*Infra*, page 3.)

III. Petitioner attempts by his petition for rehearing to supply matter not in the record. (*Infra*, page 4.)

IV. There must be an end to litigation some time. (*Infra*, page 5.)

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## Argument.

MAY IT PLEASE THE COURT:

The Court will observe that the petition for rehearing which petitioner has filed, sets up two propositions in support of the prayer for reconsideration by this Court of the petition heretofore filed in this Court by the petitioner. Those propositions are:

1. That the petitioner is entitled as a matter of constitutional right to apply for a writ of certiorari as a pauper, and

2. That he was a victim of fraud, collusion and concealment in the old foreclosure suit of 1893, which he seeks to assail by the collateral proceeding which he now asks this Court to entertain by writ of certiorari. (The Court will note that to that end he sets up matter in his petition for rehearing in an effort to supply what nowhere appears in the record.)

### I.

### Petitioner Errs in His Statement That He Is Entitled to Apply for Writ of Certiorari as a Matter of Constitutional Right.

He has had his day in court. In the foreclosure suit he was made a party and properly served with process. See pages 8 and 9 of respondents' "Brief Opposing Petition for Writ of Certiorari." And in this case he was

given a hearing both in the District Court and in the Circuit Court of Appeals.

There is no constitutional right to an appeal, and that is all that petitioner seeks by his petition for writ of certiorari. *District of Columbia* v. *Clawans*, 300 U. S. 617, at page 627 (1937); *Ohio* v. *Akron Park District*, 281 U. S. 74, at page 80 (1930).

II.

**Petitioner Has Set Forth None of the Reasons Which Must Be Set Up to Entitle Him to the Writ of Certiorari.**

The Court is respectfully asked to note again the matter set forth at pages 7 and 8 of respondents' "Brief Opposing Petition for Writ of Certiorari." The Court in the old foreclosure suit, the decree in which it is the effort of petitioner by this proceeding to set aside, had jurisdiction of petitioner. Petitioner's contention that he was imposed upon because, so he says, the guardian *ad litem* appointed for him was solicitor for the life tenants, sets up no fraud going to the jurisdiction of the court. At most, even if true, it sets up an irregularity, only, in the proceedings, and such is not available on collateral attack. The authorities upon that are fully set forth at the top of page 16 of respondents' "Brief Opposing Petition for Writ of Certiorari." On collateral attack, the absence of a guardian *ad litem* altogether would not have affected the integrity of the decree entered in that cause. *Wettrick* v. *Martin*, 181 Ill. App. 94, 97, 98 (1913).

## III.

**Petitioner Now Attempts to Supply Matter, Nowhere Apparent in the Record, as Inducement to This Court to Grant Him a Writ of Certiorari. That Matter Cannot Be Considered by This Court. Furthermore, as Shown Above, Even if Considered, It Would Furnish No Ground for Granting the Writ.**

A. *This Court is prevented by the Constitution from acting as a court of original jurisdiction in the matter which petitioner seeks to bring before it. It can act only upon the record brought before it from the Circuit Court of Appeals.*

That is well shown in the case of *Edward Hines Trustees* v. *Martin,* 268 U. S. 458, at pages 464 and 465 (1925), where this Court said:

> "This court is a court of review and it will not consider questions not raised or disclosed by the record brought to it for review and which were not considered by the courts below."

It is emphasized in the case of *Wheeler Lumber Co.* v. *United States,* 281 U. S. 572, at page 576 (1930), where this Court said:

> "There are two reasons why a certification by that court [the court of claims] which embraces the whole case, cannot be entertained by this Court. One is that to accept such a certification and proceed to a determination thereon, in advance of a decision by that court, would be an exercise of original jurisdiction by this Court contrary to the constitutional provision which prescribes that its jurisdiction shall be appellate in all cases other than those affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party."

To the same effect are *Burnet* v. *Commonwealth Imp. Co.,* 287 U. S. 415, at page 418 (1932); *Magruder* v. *Drury,* 235 U. S. 106, at pages 112 and 113 (1914).

Furthermore, this matter is set up by the petitioner for the first time in his petition for rehearing, which partakes of the nature of a supporting brief, and a supporting brief is no part of the petition for certiorari. *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, at page 178 (1938).

**Conclusion.**

This controversy was fully disposed of over forty years ago in a foreclosure proceeding in which petitioner was made a party and brought in by proper process. As conclusively shown in respondents' "Brief Opposing Petition for Writ of Certiorari," at pages 11 to 13 thereof, petitioner has failed to come in in apt time to review the decree in that case, and as shown at pages 13 to 20 of that brief, even if petitioner had come in within apt time, he could not have disturbed that decree. And so in conclusion it would seem that the language of *Baldwin* v. *Traveling Men's Association*, 283 U. S. 522, at page 525 (1931), is most appropriate here, thus:

> "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties."

Respectfully submitted,

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